

## MAROUKI (Migration) [2017] AATA 755 (24 April 2017)

### DECISION RECORD

**DIVISION:** Migration & Refugee Division

**APPLICANT:** Mrs Ronz Salem MAROUKI

**CASE NUMBER:** 1617174

**DIBP REFERENCE(S):** BCC2015/1649696

**MEMBER:** Chantal Bostock

**DATE:** 24 April 2017

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:

- cl.820.211(2) of Schedule 2 to the Regulations
- cl.820.221 of Schedule 2 to the Regulations.

•

•

•

24 April 2017 at 9:29am

Statement made on

### CATCHWORDS

Migration – Partner (Temporary)(Class UK) visa – Subclass 820 (Partner (Temporary)) – Sponsorship – Did not submit Form 40 – Since that time completed Form 40 submitted – Other evidence of genuine relationship

### LEGISLATION

*Migration Act 1958*, ss 5F(2)(a)-(d), 65

*Migration Regulations 1994*, Schedule 2, cl 820.211, r 1.03, r 1.15A(1)-(4), r 1.20J, r 1.20KA - KC

### STATEMENT OF DECISION AND REASONS

#### APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 12 October 2016 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).

2. The applicant applied for the visa on 9 June 2015 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant.
3. The applicant appeared before the Tribunal on 19 April 2017 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's spouse, the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
4. The applicant was represented in relation to the review by her registered migration agent.
5. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

6. By way of background, the applicant, a Swedish citizen of Iraqi background, met the sponsor, an Australian citizen also of Iraqi background, while studying in Australia. They developed a relationship and married on 24 April 2015. The applicant lodged the partner visa, sponsored by her husband on 9 June 2015, as noted earlier. The delegate, however, refused the application because the applicant did not submit the Form 40, the *sponsorship for a partner to migrate to Australia* form.
7. Prior to the Tribunal hearing, the parties lodged a substantial body of additional material including the following: the completed form 40; the parties' joint bank statements; statutory declarations in support of their relationship from family members; photographs of the parties including at their religious wedding ceremony and with family and friends; superannuation statements indicating that they are beneficiaries of each other's superannuation; sponsor's ANZ statement indicating he obtained a personal loan of \$30 000 for "wedding costs"; NRMA certificate of insurance in the name of the parties; sponsor's ATO 2015 and 2016 returns, declaring the applicant as his spouse; parties' accompanying personal statement; receipts for household items; tenancy agreement in relation to their unit in St Marys; and submissions from their representative.
8. The issue in the present case is whether the applicant is sponsored by her spouse.

SPOUSE/DE FACTO (cl.820.211(2)(a), (3)(e), (4)(e), (5)(e), (6)(d), cl.820.221)

### **WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP**

9. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
10. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This

includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

### **ARE THE PARTIES VALIDLY MARRIED?**

11. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The Department's file contains the parties' marriage certificate, which indicates that they married on 24 April 2015 in Sydney. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

### **ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?**

12. The applicant and the sponsor gave evidence which was consistent with one another and the material on file. For that reason, the Tribunal found the parties credible.
13. Financial aspects of the relationship – The parties gave evidence that the applicant commenced working after completing her studies in business. Both parties now have permanent full-time work. The applicant works as a claims handler while the sponsor works as a panel beater in Chatswood. The applicant earns \$48 000 per annum while the sponsor earns \$1250 per fortnight. The parties paid \$360 per week in rent in relation to their flat at St Marys, which is where they moved to once they had the religious wedding ceremony. The applicant manages the parties' weekly budget. Both parties stated that the applicant's salary is deposited into their joint ANZ bank account which is used for daily expenses while the sponsor's salary is deposited into their CBA account, which is their savings account. The parties took a personal loan of \$30 000 for their wedding party, of which they have paid off \$20 000. The loan was in the name of the sponsor as the applicant is not a permanent resident. They are saving for a house.
14. Nature of the household – The parties gave evidence that they commenced living together at their flat in St Mary's immediately after their religious ceremony. They rented the flat in November 2015 and furnished it according to their tastes. The applicant was primarily responsible for housework although the sponsor also assisted, including with the cooking. The parties currently live with the sponsor's parents and his younger sister, in order to save money for a house. They contribute on average \$200 per week to the household finances. The sponsor's mother does most of the cooking while the parties help with the household cleaning chores.
15. Social aspects of the relationship – The parties held their wedding ceremony on 23 January 2016, at which more than 450 guests were invited. They gave evidence that the parties get on well with their respective families. The applicant stated that her mother-in-law treated her like a daughter, particularly as her own mother lives in Sweden. On weekends, the parties visit their respective families, go out to dinner or the cinema or spend time at home. The parties had a belated honeymoon on the Gold Coast in February 2017, which was when they could afford to travel.
16. Nature of persons commitment to each other - The parties met in December 2013, had further contact through Facebook and started dating. They married at the registry on 24 April 2015 while their religious ceremony was held on 23 January 2016. The parties began to live together after the religious ceremony. They both explained that for religious and cultural reasons, they could not live together until they had undertaken the religious ceremony. When asked why they did not hold both ceremonies on the same day, the parties stated that they needed time to earn money and to save for the religious wedding. The parties wish to buy a

house, start a panel beating business, which the applicant would manage and have children together.

17. When asked why they did not submit the form 40 to the Department, the applicant stated that the immigration process was complicated and they did not understand what was required.
18. Based on the material before it, including the oral evidence of the parties and the material submitted to the Tribunal, the Tribunal is satisfied that the parties had and continue to have a mutual commitment to shared life to the exclusion of others and a genuine and continuing relationship: s 5F(2)(b) & (c) Migration Act. Furthermore it is satisfied that the parties did not live separately and apart on a permanent basis at the time of application and currently live together at the time of decision: s.5F(2)(d) Migration Act. Given these findings the Tribunal is satisfied that at the time the visa application was made and the time of this decision, the parties were in a spousal relationship. Therefore the applicant meets cl. 820.211(2)(a) and cl.820.221.

SPONSORSHIP (CL.820.211(2)(C), 820.211(3)(F), 820.211(4)(F), 820.211(5)(F), 820.211(6)(C), 820.221(1)(B))

#### **IS THE APPLICANT SPONSORED?**

19. Clause 820.211 requires at the time of application, the applicant meets one of several alternative sub criteria. These include 820.211(2)(c), which requires that the applicant was, at the time of application, sponsored by the sponsor, where such person has turned 18; or where they have not, by the sponsor's parent or guardian who has turned 18 and is either an Australian citizen, permanent resident or eligible New Zealand citizen (as defined in r.1.03 of the Regulations).
20. At the time of decision, the applicant must continue to be sponsored by the sponsor, and the sponsorship must have been approved by the Minister and be still in force. Exceptions apply in certain circumstances where the sponsor has died, or family violence has occurred, or a child is involved. For visa applications made on or after 18 November 2016, the sponsor must also have consented for the Department to disclose to each applicant any conviction for a relevant offence, unless the conviction has been quashed or otherwise nullified, or where the sponsor has been pardoned with the effect that he or she is taken never to have been convicted of the offence: cl.820.221.
21. Approval of sponsorship is subject to limitations contained in r.1.20J of the Regulations which sets a limit on the number of people that a person can sponsor in a lifetime and a minimum time that must lapse between each sponsorship, and in r.1.20KA which sets a limit on the period before which certain Parent visa holders can sponsor another person for a Partner visa. There are further limits imposed by r.1.20KB in relation to sponsors charged with, or convicted of, certain offences where the visa application was made on or after 27 March 2010, and r.1.20KC for sponsors convicted of a relevant offence who have a significant criminal record in relation to the relevant offence where the visa application was made on or after 18 November 2016.
22. Based on the material before it, including the oral evidence of the parties, the Tribunal is satisfied that the parties have turned 18. It further finds that the applicant held a substantive visa at the time of application. The Tribunal further finds that the sponsor sponsored the applicant at the time of application and decision. Finally, the Tribunal finds that the sponsorship should be approved. On the evidence before the Tribunal, the requirements of cl.820.211(2) and cl.820.221 are met. Given the findings above, the appropriate course is to

remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

## **DECISION**

23. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:
- cl.820.211(2) of Schedule 2 to the Regulations
  - cl.820.221 of Schedule 2 to the Regulations.

Chantal Bostock  
Member

## **ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994**

### **1.15A SPOUSE**

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
  - (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
  - (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
    - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day to day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and
    - (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being married to each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).